

1950

Present : Windham J. and Basnayake J.

ROMANIS, Appellant, and HARAMANISSA *et al.*, Respondents*S. C. 341—D. C. Kegalla, 4,615**Kandyan Law—Deed of gift—Revocability—Kandyan Law Ordinance, No. 39 of 1933.*

A Kandyan deed of gift executed prior to 1st January, 1939, is, subject to certain exceptions, revocable.

**A**PPEAL from a judgment of the District Court, Kegalla.

V. A. Kandiah, with V. K. Kandaswamy, for plaintiff-appellant.

E. B. Wikramanayake, K.C., with C. E. S. Perera, for defendant-respondents.

*Cur. adv. vult.*

March 30, 1950. BASNAYAKE J.—

This is an appeal from the judgment of the District Judge of Kegalla holding that a deed of revocation of a deed of gift executed by one Bandiya is valid and effectively revokes the gift made by him. Shortly the facts are as follows :—

One Pallewalayalage Bandiya made a gift of certain lands to his five children by deed No. 7819 of 11th March, 1911, attested by D. G. Fernando, Notary Public. The material portion of that deed reads :

“ I hereby gift grant and assign the said premises subject to my life interest in them unto my affectionate children Pallewalayalage Leisa, Pallewalayalage Haramanissa, Pallewalayalage Thepanissa, Pallewalayalage Allissa and Pallewalayalage Romanissa all of Ambungala aforesaid, for and in consideration of the love and affection I bear for them and other generous reasons more particularly in expectation of succour and assistance from them. Wherefore the said donees are hereby empowered to have and to hold the said premises with all my right title and interest in them subject to my life interest and to the injunction herein contained. The said donees shall not sell mortgage exchange or otherwise alienate the said premises nor shall they lease them for a period exceeding one year. At their death the said premises shall devolve on their heirs executors administrators and assigns to be held and possessed by them for ever or to be dealt with as they please.”

By deed No. 3532 of 5th July 1943, attested by R. V. Dedigama, Notary Public, Bandiya revoked the above deed in the following terms :—

“ Whereas I the said Pallewalayalage Bandiya by Deed of Gift No. 7819 dated 11th March, 1911, attested by D. G. Fernando, Notary Public, donated, granted, conveyed and assigned subject to the terms and conditions set forth in the said deed the lands mentioned in the schedule hereto to Pallewalayalage Leisa, Pallewalayalage Haramanisa, Pallewalayalage Thepanisa, Pallewalayalage Allisa, and Pallewalayalage Romanisa, all of Ambrangala aforesaid subject to a life interest in my favour.

And whereas I the said Pallewelayalage Bandiya am desirous of revoking, annulling and making void the said Deed of Gift No. 7819, dated 11th March, 1911, attested by D. G. Fernando, Notary Public.

Now Know Ye and These Presents witness that I the said Pallewelayalage Bandiya do hereby revoke, annul and make void the said deed of gift No. 7819 dated 11th March, 1911, attested by D. G. Fernando, Notary Public."

The question that arises for decision is whether the revocation of deed No. 7819 is valid or not. On the question of revocability of gifts Armour contains the following passage<sup>1</sup> :

"All deeds or gifts," says Sawers, "excepting those made to priests and temples whether conditional or unconditional, are revocable by the Donor in his life time." (Section 3.)

"A revocable deed of gift becomes null and void under various circumstances.

1. If the Donor did by a subsequent Deed revoke the former Deed." (Section 4.)

In the case of *Bologna v. Punchi Mahatmeya*<sup>2</sup> the Full Bench of this Court has held that the general rule is clear that deeds of gift are revocable in Kandyan Law and that before a particular deed is held to be exceptional to this rule it should be shown that "the circumstances which constitute nonrevocability appear most clearly on the face of the deed itself."

The above view is consistent with that expressed earlier in *Kiri Menicka v. Cau Rala & others*<sup>3</sup> where a Full Bench held that a renunciation of the right to revoke expressed on the face of the deed makes it irrevocable.

The law as stated in these cases has been consistently followed since. The deed in question in the instant case is therefore revocable. There are numerous decisions of this Court on this point and it is unnecessary to recapitulate all of them here. The later authorities are all collected in the cases of *Dharmalingam v. Kumarihamy et al.*<sup>4</sup> and *Ukku Banda v. Paulis Singho*<sup>5</sup>.

The Kandyan Law Ordinance, No. 39 of 1938, which enacts the law applicable to Kandyan deeds of gift does not apply to deeds executed before 1st January, 1939, and need not therefore be discussed for the purpose of this case.

For the above reasons we agree with the conclusion of the learned District Judge.

The appeal is dismissed with costs.

WINDHAM J.—I agree.

*Appeal dismissed.*

<sup>1</sup> *Armour's Grammar of the Kandyan Law (Perera's) pp. 90-91.*

<sup>2</sup> *Ramanathan's Reports, 1863-68, p. 195.*

<sup>3</sup> *Lorenc's Reports, 1858-59, p. 76.*

<sup>4</sup> (1925) 27 N. L. R. 8.

<sup>5</sup> (1926) 27 N. L. R. 449.